

REMARKS

Claims 1-19 in the present application have been finally rejected in the Office Action of May 2, 2006 (hereafter, the Office Action). Claims 12-19 have been cancelled, and claims 20-26 have been added herein. For the reasons specified herein and below, applicant respectfully requests reconsideration and removal of the rejections and timely allowance of this application.

Rejections under 35 U.S.C. §112

Claims 14 and 15 have been rejected under 35 U.S.C. § 112 as being indefinite. This rejection is moot in light of the cancellation of those claims herein.

Rejection under 35 U.S.C. §102

Claims 1, 4, 6 have been rejected under 35 U.S.C. 102 as being anticipated by Shkedy (those claims rejected but cancelled herein are not further discussed). The rejection of these claims is respectfully traversed.

With reference initially to claim 1, we find the following limitation: automatically grouping said one or more plurality of customers into one or more pools prior to an auction in accordance with said selected Preferred Program Term (claim 1, lines 7-8, emphasis added). Looking next to the specification for the meaning of the term "Preferred Program Term," we find, for example, at page 2, line 30 to page 3, line 2, that a Preferred Program Term is one of a series of terms

associated with a good or service to be auctioned which a user designates as their preference. For example, if the product to be auctioned is a consumer credit loan, with user selectable options for long-term interest rate, introductory APR, length of payment grace period, etc., a user may designate that introductory APR is the most important consideration for her in comparing such loans. Introductory APR is thus this user's Preferred Program Term.

Users choosing the same Preferred Program Term may then be pooled together, and providers permitted to bid on providing the load to the pool of users (thus bidding on users who each have the same Preferred Program Term). For this pooling feature, we look to claim 1, lines 7-8: grouping said one or more plurality of customers into one or more pools prior to an auction in accordance with said selected Preferred Program Term. For this bidding feature we look to claim 1, lines 10-11: receiving ... bids from said one or more merchants in connection with providing said product collectively to said one or more pools. There are a number of advantages provided by this structure. For example, the ability to target a specific desired term in a multi-term product allows a seller to adjust non-preferred terms. The preferred term may be offered, making up the cost to the seller of that term by the adjustment to the non-preferred terms.

Thus, the present invention provides a convenient way to organize a group of buyers together by their personal preferences and facilitate sellers bidding on providing to those buyers goods or services that are targeted to the buyers' preferences. Shkedy fails to teach this concept nor the limitations cited above. Specifically, the Office Action asserts that Shkedy teaches the concept of Preferred Program Term at col. 13, lines 35-43. However, this section teaches that a user can specify the parameters of a product such as departure and destination

locations, times, and class of service for air travel. It does not teach that a user select from among these choices one or more as a preference for the product. Thus, for example, Shkedy can not teach a system allowing a seller to make calculated trade-offs to provide the preferred term.

Accordingly, it is asserted that Shkedy fails to teach each and every element of the invention claimed in claim 1. It is well established that "[a] claim is anticipated [under 35 U.S.C. § 102] only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). See M.P.E.P. § 2131. For at least the reasons that Shkedy fails to teach or suggest the concept of a Preferred Program Term, claim 1 is patentably distinct therefrom. Furthermore, as claims 4 and 6 each depend from claim 1, and therefore contain all limitations found in claim 1, they are similarly distinct from Shkedy. Thus, applicant respectfully requests reconsideration and allowance of claims 1, 4, and 6.

Rejection under 35 U.S.C. §103

Claims 2, 5, 7, and 9 have been rejected under 35 U.S.C. §103 as being unpatentable over Shkedy. Applicant respectfully traverses the rejection of claims 2, 5, 7, and 9 on these grounds. Applicant reiterates the argument offered above, that Shkedy fails to teach the concept of Preferred Program Term, and the process of applicant's invention to provide customers pooled by like Preferred program Term to bidders offering products or services.

Claims 2, 5, 7, and 9 depend either directly or indirectly from claim 1, and therefore contain all limitations of claim 1. It follows that since claim 1 includes limitations not taught by Shkedy, claims 2, 5, 7, and 9 must likewise contain those same limitations, and thus be similarly distinguishable from that reference.

Furthermore, if the Office Action seeks to modify the reference in order to show obviousness, there must be some suggestion in the reference (or otherwise cited) to make such a modification. The Office Action points to nothing in Shkedy which would suggest modifying its teachings to provide the aforementioned Preferred Program Term nor the thus-enabled pooling and bidding of the present invention. Applicant respectfully requests reconsideration and allowance of claims 2, 5, 7, and 9.

The Office Action additionally rejects claims 3, 8, and 10-11 under 35 U.S.C. 103 as being unpatentable over the combination of Shkedy and Shoham. Applicant has distinguished claim 1 from Shkedy above. Claims 3, 8, and 10-11 depend directly or indirectly from claim 1. Thus, for the combination of Shkedy and Shoham to be effective prior art against the claims, Shoham must disclose the Preferred Program Term concept so as to provide what Shkedy is lacking. However, Shoham fails to do so. The system disclosed by Shoham aggregates buyers interested in purchasing a product offered at a low price, provided a sufficient number of buyers commit to the purchase. Essentially, the Shoham system uses volume discounts to attract buyers. However, Shoham is silent as to permitting buyers to rank their preferences for certain attributes of the goods or services being offered. Thus, Shoham as well does not teach or suggest the concept of Preferred Program Term, nor the ability to pool users and provide bids to them based on the Preferred Program Term. Accordingly, neither reference alone, nor the

combination of the two references teach, suggest or disclose each element of the invention constituting claim 1 of the present application. "To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)." M.P.E.P. § 2143.03. Accord. M.P.E.P. § 706.02(j). As claims 3, 8, and 10-11 depend directly or directly from claim 1, they are distinct from the cited references for the same reasons that claim 1 is distinct therefrom. Thus, applicant respectfully request reconsideration and allowance of claims 3, 8, and 10-11.

Importantly, while applicant has focused on the common features from the base claim, each of the dependent claims in the present application provide their own additional limitations which may form the basis for distinguishing the reference, although such limitations are not explicitly addressed herein. Thus, applicant reserves the right to argue the differences between the dependent claim limitations and the cited references for a later date, if necessary.

Finally, new claims 20-26 are presented above for consideration with the filing of this Request for Continued Examination.

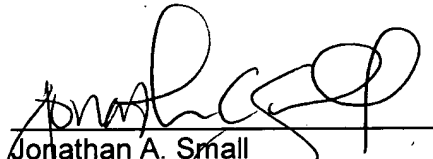
CONCLUSION

In view of the foregoing, applicant believes all claims pending in this application now distinguish over the cited art and are in condition for allowance. The issuance of a formal Notice of Allowance of this application at the earliest possible date is respectfully requested.

By action taken here, Applicant in no way intends to or causes any surrender of any subject matter or range of equivalents beyond that strictly required to patentably distinguish the claimed invention as a whole over the prior art. Applicant expressly reserves without dedication all such subject matter and equivalents that may fall in the range between Applicant's literal claim recitations and combinations taught or suggested by the prior art.

If the Examiner believes that a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-941-4470.

Respectfully submitted,



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